



May 21, 2001

Ms. Lilliam Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2001-2093

Dear Ms. Graham:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 147451.

The City of Mesquite Police Department (the "department") received a request for information about an incident that led to the requestor's arrest. You inform us that you have released some of the requested information. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

We first address your failure to comply with section 552.301 of the Government Code in requesting this attorney general decision. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information may be withheld from the public. Section 552.301(b) provides that "[t]he governmental body must ask for the attorney general's decision and state the exceptions that apply . . . not later than the 10th business day after the date of receiving the written request [for information]." Section 552.302 provides that "[i]f a governmental body does not request an attorney general decision as provided by Section 552.301 . . . the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information."

You inform this office that the department received the request for the information at issue on February 26, 2001. Your letter requesting this decision is dated March 19, 2001. Thus, the department did not ask for this decision within 10 business days of the date of its receipt of the request for information. In this regard, you also inform us that on March 1, the

department sent the requestor what you call a "clarification letter." You state that the department received the requestor's response to the "clarification letter" on March 5. You do not account for the two days that elapsed between the respective dates of the department's receipt of the request for information and its "clarification letter." You appear to contend that the department had ten business days from March 5, the date of your receipt of the requestor's response to the "clarification letter," to ask for this decision.

You provided this office with a copy of your "clarification letter." It addresses only your estimate of the cost of making the requested information available to the requestor. Under section 552.222 of the Government Code, "[i]f what information is requested is unclear to the governmental body, the governmental body may ask the requestor to clarify the request." Gov't Code § 552.222(b). Similarly, "[i]f a large amount of information has been requested, the governmental body may discuss with the requestor how the scope of a request might be narrowed[.]" *Id.* You do not contend that the department was uncertain about what information was being requested or that it wished to discuss how the requestor might narrow the scope of his request. Furthermore, section 552.2615 of the Government Code provides that the submission of an estimate of charges to the requestor does not toll the governmental body's deadlines to ask for an attorney general decision under section 552.301. *See* Gov't Code § 552.2615(g) (providing that "[t]he time deadlines imposed by this section do not affect the application of a time deadline imposed on a governmental body under Subchapter G"); *see also* Open Records Decision No. 663 at 2-5 (1999) (addressing circumstances under which governmental body's communications with a requestor to clarify or narrow a request for information will toll ten-business-day deadline under section 552.301(b)).

Thus, the department failed to comply with section 552.301 in requesting this decision. Therefore, the information at issue must be released, unless there is a compelling reason to withhold any of that information from the public. *See* Open Records Decision Nos. 630 at 3 (1994), 150 at 2 (1977). The department's claims under sections 552.103 and 552.108 are not compelling reasons that overcome your failure to comply with section 552.301. *See* Open Records Decision Nos. 542 at 4 (1990) (governmental body may waive statutory predecessor to section 552.103), 177 at 3 (1977) (governmental body may waive statutory predecessor to section 552.108). However, the need of another governmental body to withhold information under section 552.108 can provide a compelling reason under section 552.302. *See* ORD 630 at 3. You assert that the Dallas County District Attorney has a prosecutorial interest in the information at issue. Therefore, we will address the district attorney's arguments against disclosure. *See* Open Records Decision No. 586 at 3 (1991).

Section 552.108, the "law enforcement exception," excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body that raises section 552.108 must reasonably explain, if the responsive information does not do so on its face, how and why section 552.108 is applicable. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records

Decision No. 434 at 2-3 (1986). You represent to this office that one of the charges on which the requestor was arrested was filed in Dallas County Criminal Court. You state that you spoke with a representative of the Dallas County District Attorney's Office, who believes that the information at issue should not be released because it relates to pending criminal litigation. Based on these representations and our review of the information in question, we find that the release of that information would interfere with the detection, investigation, or prosecution of crime by the Dallas County District Attorney. See Gov't Code § 552.108(a)(1); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); ORD 586 at 3 (addressing statutory predecessor to section 552.108).

Section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page offense and arrest information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-87. Section 552.108(c) requires the department to release basic front-page offense and arrest information, including a detailed description of the alleged offenses, even if that information is not literally located on the front page of the corresponding police report. See Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). The department may withhold the rest of the information in question under section 552.108(a)(1). As we are able to make this determination, we need not address section 552.101.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

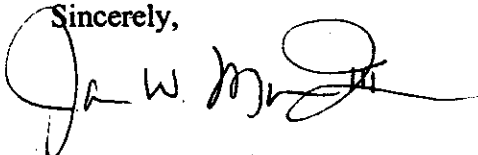
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ja W. Morris', with a stylized flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 147451

Encl: Submitted documents

cc: Mr. Ejike E. Okere
1701 Bette Drive
Mesquite, Texas 75149
(w/o enclosures)